

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

PREFERRED CAPITAL, INC.,	)	CASE NO. 1:04CV2063
	)	
Plaintiff,	)	
	)	
vs.	)	Judge John M. Manos
	)	
SARASOTA KENNEL CLUB, <i>et al.</i> ,	)	
	)	
Defendants.	)	<u>ORDER</u>

On August 5, 2005, the Plaintiff filed a Motion For Reconsideration of this Court's Order of Dismissal dated July 27, 2005 (Docket No. 45). On October 13, 2005, the Plaintiff supplemented its motion. The Defendants have not responded.

For the following reasons, the motion is DENIED.

The Plaintiff asserts three grounds for reconsideration. First, it claims that the Court misapplied the Master Program Agreement ("MPA"). The interpretation and application of the MPA was fully analyzed in the Court's previous opinion. The Plaintiff has not presented any new evidence or argument that justifies reconsideration of its decision.

Second, the Plaintiff relies upon developments in the Florida attorney general action, which was dismissed subsequent to this Court's decision. The Court relied on the presence of

the Florida litigation as one factor favoring dismissal. Such reliance, however, was not dispositive nor the only basis for this Court's decision. In light of the remainder of the Court's reasoning, the change in status of the Florida litigation does not justify vacating the dismissal.

Third, the Plaintiff relies upon a recently-decided case in an Ohio appellate court which ruled in the Plaintiff's favor on the same forum selection clause. As this Court noted in its original opinion, and as apparent from the parties' briefs, both state and federal courts, in Ohio and elsewhere, are split on the application of the forum selection clause at issue. One additional state appellate case does not alter this Court's overall analysis.

For the foregoing reasons, the Plaintiff's Motion For Reconsideration (Docket No. 45) is DENIED.

IT IS SO ORDERED.

Issued: December 5, 2005

s/ John M. Manos  
UNITED STATES DISTRICT JUDGE